

# Frequently Asked Questions about Timber Casualty Losses

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## Casualty Losses

### **What qualifies as a casualty loss?**

Generally this is a loss caused by a sudden, unexpected, and unusual event from natural or other external forces. It is not a gradual or progressive loss, such as death caused by periods of low rainfall or natural competition. Examples are losses from hurricanes, tornados, floods, plane crashes, wildfires, hail, ice storms, etc.

### **Is natural mortality or death of trees a casualty loss?**

No. Normal losses are not deductible casualty losses. Tree death caused by competition, routine disease and insect infestations, or low rainfall is normal. Not all trees planted or naturally regenerated in a new forest will survive to biological maturity. For example, the Homochitto National Forest reports an average annual mortality rate of one tree every five acres.

A non-casualty business loss may be deductible for an unexpected heavy loss of tree seedlings during an abnormal drought (IRS Revenue Ruling 90-61). For example, abnormal droughts occurred in Mississippi during 1998-2000 and were declared by the President to be a "Disaster." Heavy seedling losses during these droughts were deductible.

### **Does damage from an insect or disease infestation count as a casualty loss?**

The IRS says no for timber, maybe for shade trees. Most timber losses caused by insects and diseases are considered normal losses. But, epidemic levels of pine beetles get special consideration. Losses from an epidemic attack of pine beetles may be considered and claimed as a non-casualty business loss (IRS Revenue Ruling 87-59).

Shade tree losses around a home or business caused by a pine beetle attack may qualify as a casualty loss according to IRS Revenue Ruling 79-174. Since most shade trees are held for personal use, their valuation and deduction follow special rules (see IRS Publication 547).

### **What is the difference between a casualty loss and a noncasualty business loss?**

A casualty loss is unexpected, unusual and sudden. Casualty losses are deductible the year of the casualty on IRS Form 4684, Casualty and Thefts. The loss is considered an ordinary deduction that can offset most other kinds of income with very few restrictions.

A non-casualty business loss is unexpected and unusual, but not sudden. This loss only applies to timber being held for sale by a trade or business (see landownership categories below). Non-casualty business losses are considered an involuntary conversion of IRS Section 1231 property, which includes depreciable property and real property used in a trade or business and held for more than one year. Land, timber, coal or domestic iron ore, and some types of livestock are 1231 property. Non casualty business losses must first be netted against income from all other 1231 properties. The net is reported as either a capital loss or gain on IRS Form 4797 and then transferred to the appropriate form.

### **Who can claim a casualty loss deduction?**

Under Section 165 of the Internal Revenue Code, there are three categories of ownership that can claim a casualty loss:

1. Business – landowners who hold their timber for sale as a trade or business. Annual expenses are reported as either farm or business expenses. Casualty losses are reported on IRS Form 4684 Section B, for income-producing property. Also report depletion of timber basis on Form T.
2. Investors – landowners who hold timber for profit, but not in a trade or business. Annual expenses are reported as miscellaneous itemized deductions. Casualty losses are reported on IRS Form 4684 Section B, for income-producing property.
3. Hobby Owners – landowners who hold timber for personal use and not for profit. Annual expenses are not deductible. Hobby owners claim casualty losses on IRS Form 4684, Section A for non-income producing property. Only casualty losses that exceed \$100 plus ten percent of adjusted gross income are deductible unless a special exemption for a particular region affected by a disaster has been made by Congress.

### **What documentation is required to claim a casualty loss?**

Take and file photographs of the damage done to your timber. An appraisal of the damage is necessary to determine loss of fair market value. Document the casualty event with newspaper clippings or other materials. Timber accounting records and past income tax returns may be needed. The IRS will waive the usual fees and expedite requests for copies of previously filed tax returns for affected taxpayers who need them to apply for benefits or to file amended returns claiming casualty losses. Such taxpayers should put the assigned Disaster Designation in red ink at the top of Form 4506, “Request for Copy of Tax Return,” or Form 4506-T, “Request for Transcript of Tax Return,” as appropriate, and submit it to the IRS.

### **What is the amount of timber loss that can be claimed as a casualty loss?**

The deduction that can be claimed for a casualty loss is the lesser of the fair market value loss in timber and the timber basis. For example, if your timber basis is zero, then your deduction is also zero, no matter the size of the loss. See the detailed discussion below on Timber Basis to help you establish a basis for your timber.

To claim a deduction on IRS Form 4684, three numbers are required. All three numbers can be estimated by a forester, even following a casualty.

1. The fair market value (FMV) of the timber before the casualty. Foresters usually estimate “FMV before” using a timber cruise, but other methods are available.
2. The fair market value of the timber following the casualty. Again “FMV After” is usually estimated with a timber cruise. But, when total destruction occurs, salvage value becomes the best estimate of “FMV after”. The FMV loss is calculated using the difference (FMV before – FMV after). This FMV loss is deductible up to the amount of the basis.
3. The basis in the timber.

## **Timber Basis**

### **What is a basis?**

The basis in your property is its investment value. When you acquire property, such as timber or land, it has an initial basis, which varies according to how the property was acquired. Then, as you invest in the property, the basis is increased. When the property is sold, lost through casualty or other loss, or is used up, the basis is reduced (depleted) by recovering it through deductions or adjustments to gross income on the tax return. The current value of the basis is called the adjusted basis.

### **How do you determine initial basis?**

For purchased property, the initial basis of land and timber is the total acquisition cost. Total acquisition cost includes such things as the purchase price, lawyer's fees, surveying costs, title fees, etc. The total cost is then divided proportionally between the land and timber and other assets based on the proportion of total fair market value that is provided by each. Therefore, if purchased timberland had any standing timber, part of the acquisition cost should be placed in the timber basis.

For inherited property, the initial basis is usually stepped up to the fair market value of the property at the time of the donor's death. Inherited property usually passes to an heir via a will or by the state laws of succession and does not become the heir's property until that time. In Mississippi, a surviving spouse of jointly owned property is assumed to own half and inherit half. Basis for the half inherited is stepped up to fair market value, while the remaining half keeps the original basis.

For gifted property, the initial basis is the donor's basis plus some portion of the gift tax paid, if any. Gifted property is given or deeded to a recipient by the donor while he or she is still alive.

### **What is the initial timber basis of bare land?**

Zero. If no timber is present when property is acquired, then no basis can be placed in the timber account.

### **What is the timber basis of land planted in trees?**

Basis is usually zero for landowners who reforested their own property. Most landowners take advantage of reforestation tax incentives, including deduction, amortization and a Mississippi reforestation tax credit to recovers cost quickly. This usually results in a zero timber basis for the new forest. If tax incentives did allow all the costs to be recovered, the unrecovered costs may be added to the timber basis.

### **How can the timber basis be increased?**

Some landowners choose to capitalize or add timber management costs to the timber basis instead of deducting them each year. A landowner may elect each year to capitalize certain carrying charges, such as property taxes or interest on mortgage.

One-time elections can also be made to capitalize other expenses like timber stand improvement and pre-commercial thinning. Be careful taking this step as this election is permanent and the ability to deduct these costs is lost.

Adding costs into basis rather than deducting them as they occur is usually not the most financially advantageous option. Operating costs reduce taxes due by the amount of the

deduction times the marginal tax rate. Depletion of basis for a long term capital gain reduces taxes by the amount of the depletion times the long term capital gain rate, which is the lowest possible tax rate. Adding operating costs into basis usually results in later recovery and less tax reduction.

### **Why does basis matter?**

Following a timber sale, timber basis and sales expenses are deducted from the proceeds of the timber sale to determine net taxable gain. Since basis helps reduce taxable income, it also reduces the amount of taxes owed. Here is an example:

Buck Hunter, after a timber sale, claims a basis deduction of \$1,000 against the sale proceeds. Since Buck's total tax rates are 15% federal capital gains rate and 5% state (20% total), then basis reduces the tax owed by \$200 ( $\$1,000 \times 20\%$ ).

As stated before, the loss from a casualty is deductible up to the basis. Since casualty losses are considered an ordinary loss rather than a capital loss, ordinary income tax rates apply. Here is an example:

Buck has a casualty loss, with a \$1,000 basis in his timber account. Since Buck is in the tax bracket of 25% federal plus 5% state (30% total), then basis reduces his tax by \$300 from the \$1,000 casualty loss deduction ( $\$1,000 \times 30\%$ ).

### **What if I had a basis in timber but did not use it when I sold my timber to reduce my net taxable gain?**

For basis, the rule is 'use it or lose it.' Basis associated with timber removed should be subtracted from the timber account whether it is or is not deducted by the landowner. An example explains:

Curtis Leafblower inherited timber in 1971, clearcut in 1974, and did not use the basis available to offset gains (profit from the timber sale in 1971). After Curtis cut the timber, the basis started over at zero, even though he did not claim depletion of his basis after the timber sale.

### **I inherited my timberland several years ago and did not have a basis determination made. How can I figure out my basis?**

If the timber which was on the property at the time of acquisition is still standing, a retroactive basis determination can be made. A consulting forester should be able to make this determination. Using methods approved by the IRS, a forester can estimate the volume of timber present at the time of acquisition. By using contemporaneous timber price reports (available at [MSUcares.com](http://MSUcares.com) under Forestry), he can estimate the value of the timber at the time of acquisition.

### **Is it always worthwhile to determine basis?**

No. Low value timber acquired many years ago is generally not worth the cost of retroactive basis determination. A general rule is to hire a forester to estimate basis only if fees are less than 15% of the expected value of the basis.

Many people will not have a basis in their timber. Those whose timber naturally regenerated after acquiring the land; those who reforested and recovered all out-of-pocket costs by tax credits or deductions; and those who received gifted property with no basis do not have a timber basis.

### **How Much Can be Deducted?**

**My timber was worth a lot of money and it was totally destroyed. I don't have a basis. Does that mean I do not get to deduct the loss?**

Casualty losses are deductible up to the basis. If basis is zero, then you will not be able to deduct a loss. [*Ward v. U.S.*, 428 F.2d. 1288, Ct. Cl. 1970]

### **How much of the timber basis can be deducted for the loss?**

For a casualty, the entire basis in the timber account can be compared to the fair market value loss to determine what is deductible. The entire basis is used even when the casualty only causes partial loss. This IRS position allows the entire timbered acreage represented by the timber account, called the Single Identifiable Property (SIP), to be considered damaged by the casualty. Landowners who keep 10,000 or more acres in one timber account may be subject to discounting rules. Here is an example:

Holly Ivytree has 160 acres of timberland with a timber basis of \$30,000. A casualty damaged 10 acres, resulting in a fair market value loss of \$25,000. The loss on 10 acres is compared to the basis on 160 acres because that is how Ms. Ivytree kept her timber basis account. Since \$25,000 is the lesser of basis and fair market value loss, her casualty loss deduction is \$25,000. The timber account still has \$5,000 basis remaining.

For more information on the SIP concept see Rev. Rul. 99-56, I.R.B. 1999-51, (December 6, 1999). Code Sec. 165: Casualty loss: Timber: Single Identifiable Property (SIP) damaged or destroyed: Damaged trees. Section 611--Allowance of Deduction for Depletion, 26 CFR 1.611-3: Rules applicable to timber. (Also §165; 1.165-7.)

### **Can I include the land basis in my timber account to increase my loss deduction?**

No, land and timber bases are separate. Land basis cannot be used to offset timber losses.

### **Salvage of Damaged Timber**

#### **Is salvage of timber required?**

Yes, you are required to reasonably try and salvage the timber. Efforts to salvage timber, such as phone calls or site visits with consulting foresters or timber buyers can be documented in a tree farm journal, diaries, or financial records. If you have sawtimber, and the timber is no longer merchantable as sawtimber, but can be used for pulpwood, the salvage requirement still holds.

#### **Will I have to pay taxes on the salvage income, if it is more than the basis?**

If the landowner receives payment for timber salvaged from a casualty, he has two options. One is to pay tax on net gains, which is salvage income minus the basis and minus the sales expenses. Net income will be a capital gain if the timber has been owned at least a year

and a day. There is no required holding period for inherited timber to claim a capital gain. With gifted property, the holding period of both the giver and the recipient together must total a year and a day.

The other option is to treat the income as an involuntary conversion, which allows the taxpayer to take the entire proceeds of the salvage, postpone recognition of the gain, and take up to two years to reinvest in qualified replacement property as explained below.

## **Purchasing Replacement Property**

### **Can I buy more timberland with that money and avoid paying taxes on the gain?**

Yes, total proceeds from a salvage sale (not just the net gain) following a casualty can be reinvested in qualified replacement property. Qualified replacement properties include timber, timberland, reforestation costs, etc. Some have incorrectly interpreted IRS rules and suggest purchasing stock in a timber corporation might be an option. Stock purchases will not qualify unless you can obtain controlling interest, which has been defined by the IRS as 80% of the company's stock.

Special rules about qualified replacement property apply to disasters which are Presidentially Declared Disasters. According to the IRS from Publication 547, "[A]ny tangible replacement property you acquire for use in any business is treated as similar or related in service or use to the destroyed property." Consult with your tax advisor to see if this is advantageous. It may be better to pay the lower capital gains tax on the involuntary conversion than to reinvest it in property which can be deducted at ordinary rates, particularly property subject to special accelerated depreciation such as under Section 179 or Bonus Depreciation.

### **Are there special rules for reporting such a gain?**

Yes, the taxpayer must let the IRS know that he or she is electing to defer the gain on an involuntary conversion. With the election, the taxpayer must explain the circumstances of the conversion (casualty or other loss and conversion) and what replacement property is to be acquired. Make the election with a statement attached to the tax return.

### **How long do you have to acquire replacement property?**

For a casualty loss or loss other than condemnation, the replacement period is two years from the date the property was damaged or destroyed. The replacement period ends two years after the close of the first tax year in which any part of the gain is realized. Extensions may be granted in some cases by applying to the director of the IRS for your area. Details on replacement property purchases can be found in *IRS Publication 547 Casualties, Disasters, and Thefts*.

### **If the replacement property costs less than the total gain, can I still avoid taxation?**

Only on what was spent for the replacement property. The remainder is taxed.

### **What is the basis of replacement property?**

It will be the cost of the replacement property minus the postponed gain.

## **Time of Deduction**

### **When can I deduct the casualty loss?**

Generally, with a casualty loss, the deduction is taken the year in which the loss occurs. However, an exception exists when the President designates a disaster area. Taxpayers with losses within a declared 'Disaster Area' may elect to treat the loss as if it had occurred in the preceding taxable year. If the past year's tax return has already been filed, the taxpayer may file an amended return for a refund. See *Tax Topic 308 Amended Returns* on the IRS website [www.irs.gov](http://www.irs.gov) for details. If an amended federal return is filed, file an amended state return as well.

## **IRS Forms**

### **How can I claim depletion of timber basis?**

Business and farm owners must use *Part II of Form T: Forest Activities Schedule* to claim depletion of basis. This form can be obtained from [www.irs.gov](http://www.irs.gov). Search for *Form T* within Forms and Publications search block. Investors, while not required to use *Form T*, must have appropriate basis records, and can use *Form T* as a model for setting up accounts and claiming depletion.

### **If the timber is held for personal use (not for profit), as for a personal hunting preserve or other recreational use, what forms are required?**

*Form 4684: Casualties and Thefts; Section A: Personal Use Property.* Transfer as directed to *Schedule A, Line 19 Casualty and Theft Losses.*

### **If the timber is part of a farming or business operation, what forms are required?**

For long-term losses, start with *Form 4684: Casualties and Thefts; Section B: Business and Income-Producing Property.* Transfer to *Form 4797: Sales of Business Property.* All gains and losses of business property are netted according to directions. If a gain results, it is treated as a capital gain and transferred to *Schedule D* of the *1040*. If a loss results, it is claimed as an ordinary loss on *Form 1040* on line 14 as *Other gains or (losses).* Gains from involuntary conversions (such as casualty events where subsequent salvage proceeds exceed the basis) may be deferred if the conversion proceeds are reinvested in replacement property as explained above. Make the election to defer by explaining the decision on a plain piece of paper attached to the tax form.

### **If the timber is investment property or property held for the production of income, not part of a trade or business, what forms are required?**

Use *Form 4684: Casualties and Thefts; Section B: Business and Income-Producing Property* to report the loss, and transfer to Schedule A, as an *Other miscellaneous itemized deduction.* Do not report timber investment property loss as a *Casualty or theft loss* on line 19 of Schedule A. Line 19 is for transferring the casualty losses from personal use property, such as your home, vacation home, vehicles, boats, etc. Personal casualty losses are reduced by \$100 per casualty event and 10% of adjusted gross income, so it is very important not to report investment property as a personal casualty loss on line 19.

Personal use property gains and losses must not be combined with gains and losses from income producing property, such as timber held for investment or for business. When personal use and income producing properties are mixed, as when the landowner's residence is located on

his or her tree farm, the personal and income producing property losses must be calculated and claimed separately.

**What are the Alternative Minimum Tax (AMT) consequences of a timber casualty loss being classed as a miscellaneous itemized deduction?**

None, for miscellaneous itemized deductions reported on line 27 of *Schedule A*.

**What happens if the deductions for the year are greater than income?**

When a loss is greater than total income, the taxpayer may have a net operating loss or NOL. Net operating losses from casualties or presidentially declared disasters are carried back three years and forward twenty years until used up. If this is the case, please consult IRS Publication 536: *Net Operating Losses (NOLs) for Individuals, Estates, and Trusts* and your personal tax advisor.

**What about Mississippi taxes?**

Mississippi is considered a “piggy-back” state, since their tax system ‘piggy-backs’ or depends on the federal income tax rules and regulations for most situations. Casualty losses are treated in the same way for Mississippi income tax as they are for the federal income tax. Use federal form 4684 to report casualty losses for the Mississippi tax return as directed in the Mississippi State Income Tax instructions. For more information see the Mississippi State Tax Commission website at [www.mstc.state.ms.us](http://www.mstc.state.ms.us).

**Where Can I get More Information?**

The IRS website, [www.irs.gov](http://www.irs.gov), has an assortment of publications concerning losses. These publications can be found by entering “Disaster Assistance” in the search block. Of particular interest are two IRS publications: 547 “Casualties, Disasters, and Thefts” and 584 “Casualty, Disaster, and Theft Loss Workbook (Personal-Use Property). These publications are updated every year.

“Publication 2194: Disaster Losses Kit for Individuals” and “Publication 2194-B Disaster Losses Kit for Businesses” may be useful. All IRS publications may be ordered from the toll free number, 1-800-829-3676.

For more information about timber basis, consult MSU-ES Pub 1983, *The Basics of Basis* by Stephen G. Dicke and Deborah A. Gaddis, available at [www.msucares.com](http://www.msucares.com).

Mississippi State University Extension Service publications relating to disaster issues may be found at [www.msucares.com](http://www.msucares.com).

North Carolina State University Extension Forestry has a variety of publications relating to casualty losses and salvaging storm damaged timber. These publications may be found at [www.ces.ncsu.edu/nreos/forest/index](http://www.ces.ncsu.edu/nreos/forest/index) under the topic “Storm Recovery Information and Safety Tips.”

Federal timber taxation information is available at [www.timbertax.org](http://www.timbertax.org). Look for “Casualties Losses” under “Getting Started” for specifics on casualty losses.